

July 21, 2023 10:28 AM

CLERK OF COURT

U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

BY: EOD SCANNED BY: *1007121*

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CANCEL SENTENCE BY A PERSON IN FEDERAL CUSTODY

In the United States District Court for the		1:23-cv-775
Name (under which you were convicted): <i>Keenan Jermaine Dunigan</i>	Docket or Case No.: <i>1:20-CR-29</i>	Hala Y. Jarbou Chief United States District Judge
Place of Confinement: <i>FCC P.O. Box 1000 Cumberland, MD 21501</i>	Prisoner No.:	
UNITED STATES OF AMERICA	v. <i>Keenan Dunigan</i>	MOVANT (include name under which convicted)

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging: *United States District Court Western District of Michigan Southern Division*
- (b) Criminal docket or case number (if you know): *1:20-CR-00024-HYJ*
2. (a) Date of the judgment of conviction (if you know): _____
(b) Date of sentencing: *May 26, 2021*
3. Length of sentence: *Thirty two years (32)*
4. Nature of crime (all counts): *(See Attachment Contingue Page)
21 USC § 841(a)(1) and 21 USC § 841(b)(1)(C) knowingly and intentionally distribution of a mixture and substance containing a detectable amount of fentanyl a schedule II controlled substance, the use of which resulted in the death of a person, knowingly & intentionally conspired to do the same.*
5. (a) What was your plea? (Check one) (1) Not guilty (2) Guilty (3) Nolo contendere (no contest)
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? *Guilty to count 6 21 USC § 841(a)(1) and 841(b)(1)(C). All other counts dismissed.*
6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No
8. Did you appeal from the judgment of conviction? Yes No

With others to distribute and possess intent to distribute a controlled substance, namely heroin and fentanyl, in violation of 21 USC §846.

Knowingly possessed a firearm, and the was in and affecting commerce, in violation of 18 USC §922(g)(1) and 18 USC §924(e).

Knowingly possessed the following firearm in furtherance of the drug trafficking crime of possession with intent to distribute fentanyl and heroin, in violation of 18 USC §924(c)(A)(I)

Count 1, 2, 5, 7 and 8

Knowingly and intentionally possessed with intent to distribute a mixture or substance containing fentanyl a schedule II controlled substance and heroin, a schedule I controlled substance, in violation of 21 USC §841(a)(1) and 841(b)(1)(C) a

9. If you did appeal, answer the following:

(a) Name of court: U.S. Court of Appeals For The Sixth Circuit

(b) Docket or case number (if you know): 21-1549

(c) Result: Denied

(d) Date of result (if you know): May 18, 2022

(e) Citation to the case (if you know): _____

(f) Grounds raised: Plea Agreements and sentencing guidelines enhancement.

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: 3841(b)(1)(C) Death Results

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Death result enhancement is an element that must be submitted to the jury and found beyond a reasonable doubt because it increases a defendant's minimum and maximum sentence. The court also held the statutory language in 3841(b)(1)(C) requires a defendant's unlawful distribution of the drugs be the "but-for" cause of the person death rather than a mere contributory factor. Burrage v. U.S. 571 US 204, 134 S. Ct. 881 (8) L. Ed. 2d 715 (2014).

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

- (2) If you did not raise this issue in your direct appeal, explain why: Ineffective

Assistance of counsel failed to raise issue.

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(5) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Counsel was ineffective for failing to raise issue.

GROUND TWO: Plea Agreement Element Violation Rule 11(c)(1)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The court violate the plea Agreement by not explaining Fed. R. Crim. P. 11(c)(1) During the plea hearing, the district court did not explain "the adequately explain the term conspiracy to him. This case involved a complex conspiracy charge while the drug conspiracy was not simple. The never explain that death results element must be submitted to the jury and found beyond a reasonable doubt because it increases defendant's minimum and maximum sentence.

U.S. v. Edgecomb, 410 F.2d 1306 (6th Cir. 1990)

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

Ineffective Assistance of Counsel can't be raise in direct appeal.**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(5) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Ineffective Assistance of Counsel failedto raise issue.

GROUND THREE: Probable cause.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The warrant in this case failed to make any connection between the residence to be searched and the facts of criminal activity that the officer set out in his affidavit. That affidavit also failed to indicate any connection between the defendant and any of the criminal activity that occurred there. In order to establish probable cause, however, there must be a nexus between the place to be searched and the evidence sought. *U.S. v. Van Shutters*, 163 F.3d 331, 336 (6th Cir. 1998).

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Counsel failed to raise issue on appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(5) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Counsel failed to raise issue Ineffective Assistance Counsel

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(5) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: _____

(b) At the arraignment and plea: _____

(c) At the trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?

Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future?

Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Fogle V. Pierson, 435 F.3d 1252, 1258 (10th Cir. 2006) (Prisoner entitled to consideration under equitable tolling doctrine because being locked in cell at least 23 hours a day and denied access to legal aid arguably constituted extraordinary circumstances. Although applied sparingly equitable tolling is available when a prisoner establishes (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing. Ata V. Scott, 662 F.3d 736, 741 (6th Cir. 2011). (See Attachment)

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

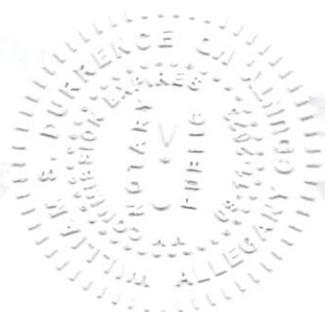
Therefore, Movant asks that the Court grant the following relief: Waiver set aside

The prison at which he is incarcerated has been operating on lockdown status as a result of the COVID-19 pandemic thereby preventing him from accessing the legal resources necessary to prepare his motion. The pandemic constitute extraordinary circumstances from timely filing motion. Also in June of 2023 the Wild fire air alert cause the institution to be placed on lockdowns and there was a lockdown due to issue with the institution fence. For these reason defendant motion should be grant as timely filed.

Under the penalty of perjury I swear that the due diligently filed and because of the reason stated the motion would have been timely filed 28 USC §1746.

Also from may 26th until June 16th 2023 defendant was placed in S.H.U 24 hour lockdown and also was unable to access proper legal resources.

WILLIAM S. DURRENCE
Notary Public-Maryland
Allegany County
My Commission Expires
September 11, 2023



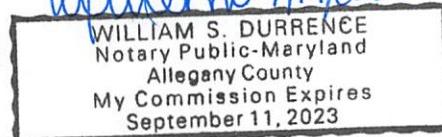
sentence for all the reasons stated above because justice so requires.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on June 14, 2023
(month, date, year)

Executed (signed) on June 14, 2023 (date).



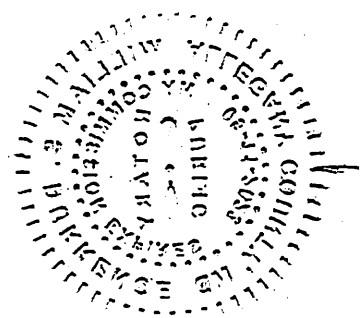
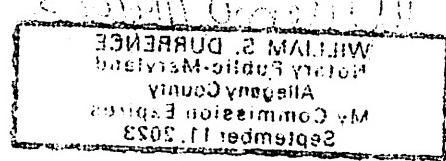
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Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Image id: 1053

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heenan

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Federal Correctional Institution
Cumberland

P.O. Box 1000
Cumberland, MD
21502

SP656-040
Clerk Of The Court
315 W Allegan ST
Lansing, MI 48933
United States

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CANCELLATION STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL



02 0860 0005 5355 0077